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| Title | Motions and Applications for Continuance of Trial (amend Cal. Rules of Court, rule 375; adopt rule 375.1; repeal Cal. Stands. of Jud. Admin., § 9) |
| Summary | <p>Rule 375(a) of the California Rules of Court concerns continuances of trial dates and section 9 of the Standards of Judicial Administration provides guidelines for granting continuances. These would be combined into a single rule 375 and Section 9 would be repealed.</p> <p>Current rule 375(b) concerns motions to advance, specially set, or reset trial dates. This subdivision would be moved to a new rule 375.1.</p> |
| Source | Staff of the Administrative Office of the Courts and the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases |
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| Discussion | <p><u>Background</u></p> <p>In February 2003, Chief Justice Ronald M. George appointed the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases. The panel is composed of a distinguished group of experts in the fields of civil procedure and practice and of court administration. The panelists include leaders in the judicial branch and prominent attorneys whose member organizations represent a broad range of plaintiffs and defendants involved in civil litigation in California.</p> <p>The Blue Ribbon Panel convened in April–June 2003. It developed three sets of proposals intended to improve the administration of civil cases and to promote a more flexible application of the rules relating to trial setting, continuances, and case management. The proposal in this Invitation to Comment is one of the panel's three proposals. It concerns the rule and standard for continuance of trial dates.¹</p> |

¹ The other two proposals relate to the rules and standards concerning: (1) trial setting, and (2) differential case management and time for disposition of civil cases. These other proposals are contained in two additional Invitations to Comment. The three proposals are related in that all are intended to improve the administration of civil cases, but are presented separately to make it easier for commentators to address rules and standards in particular subject areas.

This Proposal

Rule and Standard on Continuances

The Blue Ribbon Panel reviewed the rule and standard relating to continuances. The panel agreed that the policy that trial dates are firm should be retained. (See amended rule 375(a).) This policy is fundamental to ensure the timely and efficient disposition of cases. But the panel recommends several significant changes in the rule and standard.

First, rule 375 would be amended to allow a request for continuance to be made by ex parte application as well as by noticed motion. (See amended rule 375(b).) This change recognizes that the need for requesting a continuance may arise on short notice and that requests for continuances should be resolved as expeditiously as possible. The amendment would make the procedures for requesting continuances more flexible.

Second, rule 375 would become the basic rule on motions and applications for continuances of trial dates and section 9 of the Standards of Judicial Administration would be repealed. The grounds for continuances would be incorporated into amended rule 375 and modified. The reference to "emergencies" in section 9 would be eliminated. The catalogue of matters under section 9 that should, under normal circumstances, be considered good cause for granting the continuance of a trial would be replaced. Instead of this catalogue, a simpler list of the facts that may constitute good cause has been placed in the rule. (See amended rule 375(d).)

Third, amended rule 375(e) would contain a list of other facts and circumstances to be considered by the court in determining whether to grant a continuance. These include such matters as the proximity of the trial date, the length of the continuance requested, the prejudice other parties or witnesses would suffer as a result of the continuance, the court's calendar, and whether trial counsel is engaged in another trial. Contrary to some newspaper reports, the fact that all parties have stipulated to a continuance would not in itself require the court to grant a continuance, but it would be one of the circumstances that the court would consider under rule 375(e) in determining whether to grant a continuance.

Finally, new subdivision (f) would be added to rule 375 stating that, as provided under Code of Civil Procedure section 1024, the court may

grant a continuance on the condition that the party requesting the continuance pay the expenses occasioned by the postponement.

Motion or Application to Advance, Specially Set, or Reset Trial Date

Currently, subdivision (b) of rule 375 concerns motions to advance, specially set, or reset a case for trial. This subdivision would be moved to separate rule 375.1. This new rule, like rule 375, would permit a party to request that a trial date be advanced, specially set, or reset by ex parte application as well as by noticed motion.

The text of the amended and new rules, and of repealed section 9, is attached.

Attachment

PROPOSAL

Rule 375 of the California Rules of Court would be amended, rule 375.1 adopted, and section 9 of the California Standards of Judicial Administration repealed to read:

1 **Rule 375. ~~Motions concerning trial dates~~ Motion or application for**
2 **continuance of trial**
3

4 (a) ~~[Motions and grounds for continuances]~~ Continuances before or
5 during trial in civil cases are disfavored. The date set for trial shall be
6 firm. Unless the case has previously been assigned for all purposes to a
7 specific judge or department, a motion for continuance before trial shall
8 be made to the judge supervising the master calendar, or if there is no
9 master calendar, to the judge in whose department the case is pending.
10 If the case has been assigned for all purposes to a specific judge or
11 department, the motion shall be made before the assigned judge or in
12 the assigned department. Except for good cause, the motion shall be
13 made on written notice to all other parties. The notice shall be given
14 and motion made promptly on the necessity for the continuance being
15 ascertained. A continuance before or during trial shall not be granted
16 except on an affirmative showing of good cause under the standards
17 recommended in section 9 of the Standards of Judicial Administration.
18 This rule shall not prevent cases not subject to the Trial Court Delay
19 Reduction Act from being removed from the civil active list as provided
20 in rule 223.
21

22 (b) ~~[Motions to advance or reset]~~ Unless the case has previously been
23 assigned for all purposes to a specific judge or department, motions to
24 advance, reset, or specially set cases for trial shall be made before the
25 presiding judge or the presiding judge's designee. If the case has been
26 assigned for all purposes to a specific judge or department, the motion
27 shall be made before the assigned judge or in the assigned department.
28 A motion to advance, reset, or specially set a case for trial shall not be
29 granted, except on notice, the filing of a declaration showing good
30 cause, and the appearance by the moving party at the hearing on the
31 motion.
32

33 (a) **[Trial dates are firm]** To ensure the prompt disposition of civil cases,
34 the dates assigned for a trial are firm. All parties and their counsel
35 must regard the date set for trial as certain.
36

1 **(b) [Motion or application]** A party seeking a continuance of the date set
2 for trial, whether contested or uncontested or stipulated to by the
3 parties, must make the request for a continuance by a noticed motion
4 or an ex parte application under rule 379, with supporting declarations.
5 The party must make the motion or application as soon as the
6 necessity for the continuance is discovered.

7
8 **(c) [Judge to hear motion or application]** A motion or application for
9 continuance of trial must be heard by:

- 10
11 (1) the presiding judge;
12
13 (2) a judge designated by the presiding judge; or
14
15 (3) if the case has been assigned to a particular judge, that judge.

16
17 **(d) [Grounds for continuance]** Although continuances of trials are
18 disfavored, each request for a continuance must be considered on its
19 own merits. The court may grant a continuance only upon an
20 affirmative showing of good cause requiring the continuance.
21 Circumstances that may indicate good cause include:

- 22
23 (1) The unavailability of an essential lay or expert witness because
24 of death, illness, or other excusable circumstances;
25
26 (2) The unavailability of a party because of death, illness, or other
27 excusable circumstances;
28
29 (3) The unavailability of trial counsel because of death, illness, or
30 other excusable circumstances;
31
32 (4) The substitution of trial counsel, but only where there is an
33 affirmative showing that the substitution is required in the
34 interests of justice;
35
36 (5) The addition of a new party if:
37
38 (A) the new party has not had a reasonable opportunity to
39 conduct discovery and prepare for trial; or
40
41 (B) the other parties have not had a reasonable opportunity to
42 conduct discovery and prepare for trial in regard to the new
43 party's involvement in the case.

1
2 (6) A party's excused inability to obtain essential testimony,
3 documents or other materials evidence despite diligent efforts; or
4

5 (7) A significant, unanticipated change in the status of the case as a
6 result of which the case is not ready for trial.
7

8 **(e) [Other factors to be considered]** In ruling on a motion or application
9 for continuance, the court must consider all the facts and circumstances
10 that are relevant to the determination. These may include:
11

12 (1) The proximity of the trial date;
13

14 (2) Whether there was any previous continuance, extension of time,
15 or delay of trial due to any party;
16

17 (3) The length of the continuance requested;
18

19 (4) The availability of alternative means to address the problem that
20 gave rise to the motion or application for a continuance;
21

22 (5) The prejudice that parties or witnesses will suffer as a result of
23 the continuance;
24

25 (6) If the case is entitled to a preferential trial setting, the reasons for
26 that status and whether the need for a continuance outweighs the
27 need to avoid delay;
28

29 (7) The court's calendar and the impact of granting a continuance on
30 other pending trials;
31

32 (8) Whether trial counsel is engaged in another trial;
33

34 (9) Whether all parties have stipulated to a continuance;
35

36 (10) Whether the interests of justice are best served by a continuance,
37 by the trial of the matter, or by imposing conditions on the
38 continuance; and
39

40 (11) Any other fact or circumstance relevant to the fair determination
41 of the motion or application.
42

1 (f) [Continuance conditioned on payment of expenses] The court may
2 grant the continuance of a trial date on the condition that the party
3 requesting the continuance pay the expenses occasioned by the
4 postponement.
5

6 **Rule 375.1. Motion or application to advance, specially set, or reset trial date**
7

8 (a) [Noticed motion or application required] A party seeking to
9 advance, specially set, or reset a case for trial must make this request
10 by noticed motion or ex parte application under rule 379.
11

12 (b) [Judge to hear motion or application] The motion or application
13 must be heard by:
14

15 (1) the presiding judge;
16

17 (2) a judge designated by the presiding judge; or
18

19 (3) if the case has been assigned to a particular judge, that judge.
20

21 (c) [Grounds for motion or application] The request may be granted
22 only upon an affirmative showing by the moving party of good cause
23 based on a declaration served and filed with the motion or application.
24

25 **Judicial Administration Standards, Section 9. Policy regarding continuances**
26 **in the superior court**
27

28 To ensure the prompt disposition of civil cases, each superior court should adopt a
29 firm policy regarding continuances, emphasizing that the dates assigned for a trial
30 setting or pretrial conference, a settlement conference and for trial must be
31 regarded by counsel as definite court appointments. Any continuance, whether
32 contested or uncontested or stipulated to by the parties, should be applied for by
33 noticed motion, with supporting declarations, to be heard only by the presiding
34 judge or by a judge designated by him. No continuance otherwise requested
35 should be granted except in emergencies. A continuance should be granted only
36 upon an affirmative showing of good cause requiring the continuance. In general,
37 the necessity for the continuance should have resulted from an emergency
38 occurring after the trial setting conference that could not have been anticipated or
39 avoided with reasonable diligence and cannot now be properly provided for other
40 than by the granting of a continuance. In ruling on a motion for a continuance, the
41 court should consider all matters relevant to a proper determination of the motion,
42 including the court's file in the case and any supporting declarations concerning
43 the motion; the diligence of counsel, particularly in bringing the emergency to the

1 court's attention and to the attention of opposing counsel at the first available
2 opportunity and in attempting to otherwise meet the emergency; the nature of any
3 previous continuances, extensions of time or other delay attributable to any party;
4 the proximity of the trial or hearing date; the condition of the court's calendar and
5 the availability of an earlier trial or hearing date if the matter is ready for trial or
6 hearing; whether the continuance may properly be avoided by the substitution of
7 attorneys or witnesses, by the use of depositions in lieu of oral testimony, or by the
8 trailing of the matter for trial or hearing; whether the interests of justice are best
9 served by a continuance, by the trial or hearing of the matter, or by imposing
10 conditions on its continuance; and any other fact or circumstance relevant to a fair
11 determination of the motion. The following matters should, under normal
12 circumstances, be considered good cause for granting the continuance of a trial
13 date:

14
15 (1) Death:

- 16
17 (i) The death of the trial attorney or an essential witness where,
18 because of the proximity of such death to the date of the trial, it is
19 not feasible to substitute another attorney or witness.
20
21 (ii) The death of an expert witness where, because of the proximity
22 of his death to the date of trial, there has been no reasonable
23 opportunity for a substitute expert witness to become qualified to
24 testify in the case.
25
26 (iii) The death of any other witness only where it is not possible to
27 obtain another witness to testify to the same facts or where,
28 because of the proximity of his death to the date of trial, there has
29 been no reasonable opportunity to obtain such a substitute
30 witness.

31
32 (2) Illness that is supported, wherever possible, by an appropriate
33 declaration of a medical doctor, stating the nature of the illness and the
34 anticipated period of any incapacity:

- 35
36 (i) The illness of a party or essential witness, except that, when it is
37 anticipated the incapacity of such party or witness will continue
38 for an extended period, the continuance should be granted on
39 condition of taking the deposition of the party or witness in order
40 that the trial may proceed on the next date set.
41
42 (ii) The illness of the trial attorney or of an expert witness, except
43 that the substitution of another attorney or witness should be

1 considered in lieu of a continuance depending on the proximity
2 of the illness to the date of trial, the anticipated duration of the
3 incapacity, the complexity of the case, and the availability of a
4 substitute attorney or expert witness.
5

- 6 (iii) The illness of any other witness only where it is not possible to
7 obtain another witness to testify to the same facts or where,
8 because of the proximity of his illness to trial, there has been no
9 reasonable opportunity to obtain such a substitute witness.
10

11 (3) Unavailability of trial attorney or witness:
12

- 13 (i) The unavailability of the trial attorney when he is engaged in
14 the trial of another case, or in the hearing, investigative or
15 formal, of a State Bar disciplinary matter, if: (a) at the time the
16 attorney accepted the trial date in this case he could not have
17 reasonably anticipated the conflict in trial dates; and (b) the
18 court was informed and made a finding at the pretrial or trial
19 setting conference or on motion made at least 30 days before
20 the date set for trial that the case was assigned for trial to this
21 attorney within a particular law firm and that no other attorney
22 in that firm was capable and available to try the case and was or
23 could be prepared to do so.
24

- 25 (ii) The unavailability of a witness only where the witness has been
26 subpoenaed or is beyond the reach of subpoena and has agreed to
27 be present, and his absence is due to an unavoidable emergency
28 that counsel did not know and could not reasonably have
29 known at the time of the pretrial or trial setting conference.
30

31 (4) Substitution of trial attorney:
32

33 The substitution of the trial attorney only where there is an affirmative showing
34 that the substitution is required in the interests of justice.
35

36 (5) Significant change in status of case:
37

38 A significant change in the status of the case where, because of a change in the
39 parties or pleadings ordered by the court, the case is not ready for trial.